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THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA

GORDON HEMPTON,

Plaintiff.

POND5, INC., a Delaware Corporation; and POND5 USER CKENNEDY342, a corporation or individual of type unknown,

Defendants.

NO. 3:15-cv-05696-BJR

DECLARATION OF ROGER M.
TOWNSEND IN SUPPORT OF
PLAINTIFF'S REPLY IN SUPPORT OF
MOTION FOR RECONSIDERATION
OF ORDER GRANTING SUMMARY
JUDGMENT (DKT. 49)

Roger M. Townsend states:

I am an attorney licensed to practice before the courts of the State of Washington. I represent Plaintiff Gordon Hempton. I have personal knowledge of the facts stated herein and am competent to testify to these facts.

- 1. The parties engaged in settlement discussions throughout June 2016 and in an unsuccessful mediation before Lou Peterson on July 5, 2016.
- 2. In early July, after the mediation failed, Plaintiff resumed discovery and litigation of the broader case. In the weeks following the failed mediation, I conducted discovery conferences and follow-up emails with Pond5's counsel regarding, among other things, the metadata missing from the sound files that Pond5 had produced to Plaintiff, and the identities of the customers who downloaded Mr. Hempton's files.

3.	On the morning of October 25, 2016, the deadline for expert reports, I directed
my staff to pr	oduce the expert reports from Greg Budney and Paul Virostek to Defendant Pond5
and to file the	e Virostek report with the Court as a supplemental filing in support Plaintiff's
opposition to	Pond5's motion for summary judgment. Attached hereto as Exhibit 1 is a true and
correct copy	of the email exchange dated October 25, 2016.

4. Mr. Virostek, one of the industry's foremost experts in metadata, happens to have been abroad during the time period that he was preparing and finalizing his expert report. Due to the distance and time difference, getting the voluminous sound files to Mr. Virostek took time, as did exchanging emails and feedback with Mr. Virostek about his analysis.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated this 2nd day of December, 2016 in Seattle, Washington.

BRESKIN JOHNSON & TOWNSEND, PLLC

By: s/Roger M. Townsend
Roger M. Townsend, WSBA # 25525
1000 Second Avenue, Suite 3670
Seattle, WA 98104
Tel: 206-652-8660
rtownsend@bjtlegal.com
Attorneys for Plaintiff

CERTIFICATE OF SERVICE I hereby certify that on December 2, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record. /s/ Jamie Telegin Jamie Telegin, Legal Assistant